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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 18th March 2015

No. 2555-IR(ID)-30/2015-LESI-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st February, 2015 in I.D. Case No.60/2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of (1) M/s Raxak Security Services, Near Purnima Gate, Pallaspalli, Bhubaneswar, (2) Raxak Security Services, Vithal Udyog Nagar, Ananda, Gujrat and their Workman Shri Biswambar Mohanty was filed by the above mentioned workman under Section 2A(2) of I.D.Act, 1947 for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNALT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 60 OF 2013 [under Section 2-A(2)]

Dated the 21st February 2015

Present:

Shri B. C. Rath, , o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between:

The Managements of . . . First Party—Management
(1) Branch Manager, Raxak Security Services,
Plot No. 565, Jaya Bhabani Complex,
Near Purnima Gate, Pallaspalli,
Bhubaneswar-20.
(2) The Managing Director,
Raxak Security Services,
Qrs.No.LIG/II,15-16,GIDC Colony,
Vithal Udyog Nagar, Ananda, Gujurat.

And

Its Workman Shri Biswambar Mohanty, S/o Late Ramananda Mohanty, Vill./P.O. Gate Bazar, Berhampur, Dist. Ganjam.	. . . Second Party—Workman
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Appearances :

For the First Party—Management	. . .	Shri P. K. Patra & S. Mishra, Advocates
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For the Second Party—Workman	. . .	Shri T. Lenka, Advocate
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AWARD

The second party workman has preferred the present application resorting to the provisions of Section 2-A(2) of the Industrial Disputes Act, 1947(for short 'the Act') with a prayer for declaring the termination of his service by way of refusal of employment with effect from the 31st January 2011 as illegal and unjust and to direct the first party management to reinstate him in service with full back wages, continuity of service and all other consequential service benefits.

2. The factual backdrop of the case relevant for the purpose of appreciation of the dispute between the parties may be narrated as follows :

It is the claim of the second party workman that he joined as Accounts Officer under the first party management in its branch office at Bhubaneswar on the 1st April 2010. It is alleged that the first party management neither paid salary to him regularly nor took any step to enrol him under the ESI and EPF Schemes for which the second party workman raised his voice to such irregularities. At this, the first party management bore a grudge and ultimately on the 31st January 2011 when he reported he was not allowed to perform his duty and was told that his service had been terminated. According to him, he was only paid two month's salary inspite of his rendering service under the first party management continuously and uninterruptedly for a period of about ten months. It is his stand that such refusal of service without any notice or notice pay and compensation as contemplated under the provisions of Section 25-F of the Act is illegal and unjustified which needs to be intervened by this Tribunal and he is entitled to be reinstated in service with full back wages and other service benefits including his arrear dues. Further, it has been asserted that the second party workman is a 'workman' and the first party management is an 'industry' as defined under the Act. Further assertion of the second party workman is that consequent upon his illegal termination he moved the labour machinery of the State Government challenging termination of his service by the first party management but as no action was taken after lapse of three months of his filing complaint before the labour machinery he has approached this Tribunal directly resorting to the provisions of Section 2-A (2) of the Act.

3. The first party management has entered into a contest denying the allegations raised by the second party workman in toto. The first party management has refuted the allegations contending

that no appointment letter was ever issued to the second party and as such he was not a 'workman' under its employment. Having not been employed at any point of time in the establishment of the first party, question does not arise about termination of his service in the guise of refusal of employment. Challenging the documents filed by the second party workman, it has been asserted that the same are self created documents. As the second party workman had never served under the first party management, the application preferred by him under Section 2-A (2) of the Act is not maintainable and the same is liable for dismissal.

4. Taking into consideration the pleadings of the parties, the following issues have been settled :

ISSUES

- (i) "Whether the case is maintainable ?
- (ii) Whether the termination of service by way of refusal of employment of Biswambar Mohanty, Accounts Officer with effect from the 31st January 2011 by the management of Raxak Security Service, Plot No. 565, Jaya Bhabani Complex, Near Purnima Gate, Pallasalli, Bhubaneswar-20 is legal and/or justified?
- (iii) If not, what relief Shri Mohanty is entitled to" ?

5. In order to prove their respective stand each side has examined one witness and pressed certain documents into evidence. The second party workman has examined himself and relied upon documents marked Exts.1 to 9 to establish his claim, whereas the first party management has examined its Senior Manager and relied upon documents marked Exts. A to D to counter the claim of the second party workman.

FINDINGS

6. *Issue Nos. (i) & (ii)*—Having regard to the pleadings of the parties, it is felt appropriate to take-up both the issues for convenience and better appreciation of the dispute.

In view of specific denial of the first party management regarding employment of the second party workman in its establishment and the issue regarding termination of his service by way of refusal of employment with effect from the 31st January 2011, the second party workman is first required to prove that he was under the employment of the first party management and had rendered continuous and uninterrupted service under it for a period of more than 240 days. Coming to the evidence adduced by the second party workman in this regard it is seen that besides his oral claim of being employed as an Accounts Officer in the branch office of the first party management at Bhubaneswar with effect from the 1st April 2010, the second party workman has relied upon documents marked Exts.1 to 9 out of which Ext.1 is a Xerox copy of the Advocate's notice issued on behalf of the second party to the first party management; Ext. 2 is a Xerox copy of the Identity Card issued in his favour; Ext. 3 is a Xerox copy of the duplicate bill issued by the Bharat Sanchar Nigam Limited showing his name to be the customer against Telephone No.0674-2590321; Ext. 4 is a copy of the Mail dated the 25th October 2010; Ext. 6 is the Xerox copy of the deposit slip dated the 14th October 2010 of the ICICI Bank; Ext. 7 is the Xerox copy of cash voucher; Ext. 8 is

the Xerox copy of the charge list of assets and Ext. 9 is the Xerox copy of a letter of appreciation issued in favour of the first party management by the Axix Bank. On the contrary, M.W. No. 1 has claimed in his evidence that the second party was never appointed as Accounts Officer under the first party management or in any other post. Filing a format of appointment letter of its establishment under Ext. A it has been contended that the second party workman was never engaged in the office of the first party management or issued with any appointment letter.

7. Law is well settled that in order to obtain any relief under the provisions of the Act, burden lies on the claimant to establish that he was under the employment of the management as a 'workman' as defined under Section 2(s) of the Act and his continuance under management for a continuous period of 240 days. When the first party management has taken a specific stand that the second party workman was never served under it as a 'workman' it has become the bouden duty of the second party workman to produce credible and unimpeachable evidence to establish the aforesaid aspect. Though the second party workman has filed and exhibited nine documents to support his claim, not a single scrap of paper directly referring to his appointment as Accounts Officer is filed in the case. All the documents relied upon by the second party workman apparently on the face of the record are unilateral documents and their self-creation cannot be ruled out. He has taken an excuse for non-filing of his appointment letter on a statement that the said appointment letter was taken away by the first party management. When he has procured and filed xerox copies of other documents he could have kept the xerox copy of the appointment letter in case the original was being required by the management on a plea to correct his date of appointment. Further, no step seems to have been taken on behalf of the second party workman asking the first party management to cause production of the Attendance Register, Payment Register, etc. to establish that he was ever employed as Accounts Officer under the first party management and was being paid wages on the Muster Roll/Wage Register. Further, on a close scrutiny of the so called Identity Card, Ext. 2 it is found that it is a Xerox copy and no explanation is coming-forth from the second party workman as to why such secondary evidence has been pressed into evidence instead of filing the original of Ext. 2. Further, in his evidence the second party workman has claimed to have received wages/salary for two months. No document is also pressed into evidence in support of such testimony. When the authenticity of the documents has been challenged by the first party management, the second party workman should be more diligent and should have produced the originals thereof. Non-production of the original documents creates a doubt on the claim/relief sought for by the second party workman. In the facts and circumstances when the second party workman has failed to establish his employment under the first party management, the question of his termination in the guise of refusal of employment does not arise at all.

8. 'Workman' as defined under Section 2(s) of the Act means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and who being employed in a supervisory capacity shall not draw wages exceeding ten thousand rupees per mensem. Neither the oral evidence nor the documents pressed into evidence on behalf of the second party workman disclose the nature of work entrusted to him. In absence of evidence disclosing the nature of work entrusted to the

second party, it cannot be held that he comes within the purview of 'workman' to claim any relief under the Act.

9. In the result, it is concluded that the second party has failed to establish through credible and unimpeachable evidence that he was ever employed under the first party management or he comes within the definition of 'workman' in order to succeed in the case.

Accordingly, the issues are answered in the negative as against the second party workman.

10. *Issue No. (iii)*—In view of my findings arrived at on Issue Nos. (i) and (ii), the second party workman is not entitled to any relief.

The case is disposed of accordingly.

Dictated and corrected by me.

B. C. Rath

21-2-2015

Presiding Officer
Industrial Tribunal, Bhubaneswar.

B. C. Rath

21-2-2015

Presiding Officer
Industrial Tribunal, Bhubaneswar.

By order of the Governor

M. NAYAK

Under-Secretary to Government